

Name of complainant/attorney representative:  
Address of complainant/attorney representative:  
City, State, Zip Code:

Complaint of \_\_\_\_\_  
v. \_\_\_\_\_, Secretary of the Army  
DA Docket Number(s):

Dear \_\_\_\_\_:

This is the Department of the Army's final decision in the above-captioned equal employment opportunity complaint filed on (insert date). Your (Your client's) initial contact with an EEO official was (insert date) and you (your client) received the Notice of Right to File a Formal Complaint of Discrimination on (insert date).

In your (your client's) formal complaint of discrimination, you (your client) allege(s) discrimination on the basis/bases of (insert basis/bases) in the following action(s) when: (FRAME THE CLAIM(S) RAISED IN THE FORMAL COMPLAINT, TO INCLUDE DATE AND SPECIFIC ACTION. IF SEVERAL CLAIMS INVOLVED, START WITH MOST RECENT.)

a.

b.

Pursuant to Title 29, Code of Federal Regulations, Section 1614.301(a) and Section 1614.107(a)(4), your (your client's) formal complaint is dismissed because you have (your client has) made a prior election to proceed under a negotiated grievance procedure (insert Negotiated Grievance Docket Number). You are advised that you must raise the allegations of discrimination in the dismissed complaint in the grievance process and that you have the right to appeal the final grievance decision to the Equal Employment Opportunity Commission.

If you are (your client is) dissatisfied with this decision, your (his/her) appeal rights are as follows:

### **APPEAL RIGHTS FOR NONMIXED COMPLAINTS**

1. An appeal may be filed with the Equal Employment Opportunity Commission (EEOC) within 30 calendar days of the date of receipt of this decision. The 30 calendar day period for filing an appeal begins on the date of receipt of this decision. An appeal shall be deemed timely if it is delivered in person, transmitted by facsimile or postmarked before the expiration of the filing period or, in the absence of a legible

postmark, if the appeal is received by the Commission by mail within 5 calendar days after the expiration of the filing period. The complainant will serve a copy of the Notice of Appeal/Petition, EEOC Form 573, to the Office of EEO/Civil Rights (Deputy for EEO Compliance and Complaints Review (EEOCCR)), Department of the Army, ATTN: SAMR-EOCCA, Suite 109B, 1941 Jefferson Davis Highway, Arlington, VA 22202-4508, and furnish a copy to the agency representative, **[insert name, address, and e-mail address of agency representative]**, at the same time it is filed with the Commission. In or attached to the appeal to the Commission, you must certify the date and method by which service was made to the Deputy for EEOCCR and the agency representative.

2. The complainant may file a brief or statement in support of his/her appeal with the Office of Federal Operations (OFO). The brief or statement **must** be filed with the OFO within 30 calendar days from the date the appeal is filed. The complainant will serve a copy of the brief of the brief or statement submitted in support of the appeal on the Deputy for EEOCCR and on the agency representative at the addresses shown above in paragraph 1 at the same time the brief or statement is filed with the Commission. The regulation providing for appeal rights is contained in Title 29 of the Code of Federal Regulations, a part of which is reproduced below:

#### **Part 1614.401 Appeals to the Commission.**

(a) A complainant may appeal an agency's final action or dismissal of a complaint.

(b) An agency may appeal as provided in Section 1614.110(a).

(c) A class agent or an agency may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or an agency may appeal a final decision on a petition pursuant to Section 1614.204(g)(4).

(d) A grievant may appeal the final decision of the agency, the arbitrator or the Federal Labor Relations Authority (FLRA) on the grievance when an issue of employment discrimination was raised in a negotiated grievance procedure that permits such issues to be raised. A grievant may not appeal under this part, however, when the matter initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration, is before the FLRA, is appealable to the MSPB [Merit Systems Protection Board] or if 5 U.S.C. Section 7121(d) is inapplicable to the involved agency.

(e) A complainant, agent or individual class claimant may appeal to the Commission an agency's alleged noncompliance with a settlement agreement or final decision in accordance with Section 1614.504.

#### **Part 1614.402 Time for appeals to the Commission.**

(a) Appeals described in Section 1614.401(a) and (c) must be filed within 30 calendar days of receipt of the dismissal, final action or decision. Appeals described in Part 1614.401(b) must be filed within 40 calendar days of receipt of the hearing file and decision. Where a complainant has notified the EEO Director [Deputy for EEOCCR] of alleged noncompliance with a settlement agreement in accordance with Section 1614.504, the complainant may file an appeal 35 calendar days after service of the claim of noncompliance, but no later than 30 calendar days after receipt of the agency's determination.

(b) If the complainant is represented by an attorney of record, then the 30 calendar day time period provided in paragraph (a) of this Section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

### **Section 1614.403 How to appeal.**

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter complainant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition [copy enclosed], and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party [Deputy for EEOCCR and the servicing agency representative] at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the complainant must certify the date and method by which service was made on the opposing party [Deputy for EEOCCR and the servicing agency representative – addresses shown in paragraph 1 above].

(c) If appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 calendar days of filing the notice of appeal. Any statement or brief on behalf of the agency in support of its appeal must be submitted to the Office of Federal Operations within 20 calendar days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The agency must submit the complaint file to the Office of Federal Operations within 30 calendar days of initial notification that the complainant has filed an appeal or within 30 calendar days of submission of an appeal by the agency.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 calendar days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 calendar days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

**Section 1614.407 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.**

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under Title VII, the ADEA [Age Discrimination in Employment Act] and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 calendar days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 calendar days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 calendar days of receipt of the Commission's final decision on an appeal; or

(d) After 180 calendar days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

**Section 614.408 Civil action: Equal Pay Act.**

A complainant is authorized under Section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216[b]) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.

**Section 1614.409 Effect of filing a civil action.**

Filing a civil action under Section 1614.408 or Section 1614.409 shall terminate Commission processing of the appeal. If private suit is filed subsequent to the filing of an appeal, the parties are requested to notify the Commission in writing.

3. If a civil action is filed and complainant does not have or is unable to obtain the services of a lawyer, the complainant may request the court to appoint a lawyer. In such circumstances as the court may deem just, the court may appoint a lawyer to represent the complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request must be made within the above referenced 90 calendar day time limit for filing suit and in such form and manner as the court may require.

4. You are further notified that if you file a civil action, you must name the appropriate Department or Agency head as the defendant and provide his or her official title. **DO NOT NAME JUST THE AGENCY OR DEPARTMENT.** Failure to name the head of the Department or Agency or to state his or her official title may result in the dismissal of the case. The appropriate agency is the Department of the Army. The head of the Department of the Army is [insert name], who is the Secretary of the Army.

The DA docket number identified at the top of page 1 of this letter should be used on all correspondence.

Sincerely,

Signature block of EEO officer or appropriate official

Enclosure

Copy Furnished:  
Complainant, if represented by an attorney; or  
Non-attorney representative  
Agency representative

NOTES:

1. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely written grievance.
2. A copy of the grievance should be attached to this notice and an extract of the contract showing that the processing of EEO complaints is permitted..
3. This notice will be issued to complainant/representative in accordance with the service rules set forth in paragraph 1-23.

4. A copy of the notice and the certified return receipt will be filed in the complaint file under Tab "Formal".
5. A copy of EEOC Form 573, Notice of Appeal/Petition will be attached to the final agency decision to dismiss. The form will be locally reproduced.

Figure 4-7 Sample Notice of Dismissal for Election of Forum (Negotiated Grievance Procedure)